



IN THE

**Supreme Court of the United States**

OCTOBER TERM, A. D., 1945.

\_\_\_\_\_  
**No.** \_\_\_\_\_  
\_\_\_\_\_

IVY LANDRETH,

*Petitioner,**vs.*

WABASH RAILROAD COMPANY,

*Respondent.*\_\_\_\_\_  
**BRIEF IN SUPPORT OF PETITION FOR WRIT OF  
CERTIORARI.**\_\_\_\_\_  
**ARGUMENT.**  
\_\_\_\_\_

The averments of a plea setting up an estoppel by reason of a prior adjudication must be definite and certain so as to avoid all ambiguity of meaning. The plea of estoppel must include every issue. If any important issue is not averred in the plea, it is not a sufficient plea. The plea ought not to leave any part of the necessary averments so uncertain that there may be doubt in the minds of the Court as to its existence. Any averment which is as consistent with a finding of interstate commerce as that of intrastate commerce is not sufficient. A plea of former adjudication must aver facts and not legal conclusions.

It is averred in the plea that the issue before the Industrial Commission was "Whether at the time and place of said accident, the said Wabash Railroad Company and Ivy Wayne Landreth were engaged in intrastate commerce and subject to the terms and provisions of the Workmen's Compensation Act of Illinois, or engaged in interstate commerce and subject to the terms and provisions of the Federal Employers' Liability Act. (Tr. 13.)" The plea avers that the Industrial Commission found "that Ivy Wayne Landreth and the Wabash Railroad Company were on the 18th day of August, 1942 operating under and subject to the provisions of the Workmen's Compensation Act and that on the 18th day of August, 1942, Ivy Wayne Landreth sustained accidental injuries which arose out of and in the course of his employment. (Tr. 10.)"

These findings are the usual jurisdictional findings in compensation cases based upon Sec. 3 of the Workmen's Compensation Act of Illinois which provides that employers and employees engaged in carriage by land, water and aerial service, and loading and unloading in connection therewith, shall be considered as operating under and subject to the provisions of the Workmen's Compensation Act.

The finding that the parties were operating under and subject to the provisions of the Workmen's Compensation Act means no more than that they were engaged in carriage by land, water and aerial service, and employees engaged in carriage by land and water may be engaged in either interstate or intrastate commerce. A finding that an employee was operating under and subject to the provisions of the Workmen's Compensation Act is not a finding that the employee was engaged in intrastate commerce.

The provision which exempts railroad employees engaged in interstate commerce from the operation of the Compen-

sation Act is Sec. 5 of the Illinois Workmen's Compensation Act which provides: "Employees shall not be included within the provisions of this Act when excluded by the laws of the United States relating to liability of employers to their employees for personal injuries where such laws are held to be exclusive."

The plea avers that the issue before the Industrial Commission was whether the petitioner and respondent were engaged in intrastate commerce or interstate commerce, but it does not appear in the plea that that issue was decided by the Commission. In order for the plea to be a bar, it must aver that the Commission found that the petitioner was engaged in intrastate commerce.

The Industrial Board is not even an inferior court. It is merely a ministerial body charged with the function of effectuating the Workmen's Compensation Act. While it may have jurisdiction to make awards in the enforcement of the Compensation Act, it cannot make a valid award which affects liability under the Federal Employers' Liability Act. It is not possible for a ministerial body to make an award based upon the application of law and facts which will deprive a person of rights granted him by a Federal law.

In the Restatement of Law "Judgments" it is said:

"A Court may have jurisdiction to render a valid judgment, although, in order to render it, it is necessary to determine a matter which the Court would not have had jurisdiction to determine if the action had been brought directly for the determination of the matter. In such a case, the Court may determine the matter, but only incidentally for the purpose of deciding the case before it. The judgment rendered by the Court will not be conclusive between the parties in a later suit brought by one of them against the other for the

purpose of determining the matter directly in a Court which has jurisdiction to determine it directly." (p. 326.)

The laws of Illinois applicable to the circumstances were substantive and were alone applicable in the determination of this case. No greater jurisdiction can be attributed to the Industrial Commission of Illinois than has been granted it by the statutes and the decisions of the Supreme Court of Illinois. In delineating the powers of the Industrial Commission in Illinois, the Supreme Court states in *Michelson v. Industrial Commission*, 375 Ill. 462.

"The commission is an administrative body created by legislative enactment for the purpose of administering the Workmen's Compensation Act. It is not a court and has no inherent powers of a court. It is a non-judicial body. It can only make such orders as are within the powers granted to it by the General Assembly. There are no intendments in favor of its jurisdiction." (pp. 466-467.)

The Circuit Court of Appeals held that inasmuch as the award found that the parties were operating under and subject to the provisions of the Illinois Workmen's Compensation Act, it must necessarily follow from this finding that both parties were engaged in intrastate commerce and that they were not engaged in interstate commerce. Inasmuch as the Industrial Commission is not a Court and has none of the inherent powers of a Court and there are no intendments in favor of its jurisdiction, the Circuit Court of Appeals was in error in inferring that the petitioner was engaged at the time of the accident in intrastate commerce.

In order to render the award a bar as *res judicata*, it would be necessary that the plea aver that the Industrial Commission found that the petitioner was engaged in intrastate commerce. The plea should have averred not only

the precise question, but it should further have averred that the Industrial Commission decided the question. In *Samon Svalina, et al. v. Andrija Saravana, et al.*, 341 Ill. 236, the Court said:

"The burden of establishing estoppel is upon him who invokes it. In order that a judgment or decree shall operate as an estoppel it must either appear on the face of the record or be shown by extrinsic evidence that the precise question was raised and determined in the former suit." (p. 247.)

To the same effect is *City of Geneseo v. Illinois Northern Utilities Company*, 378 Ill. 506, where the Court said:

"The burden of establishing estoppel by judgment is upon him who invokes it, and to so operate it must either appear upon the face of the record or be shown by extrinsic evidence that the precise question was raised in determining the former suit."

A pleading setting up a former adjudication by a court of special or limited jurisdiction must state facts showing that the court rendering it rightfully exercised jurisdiction, since there is no presumption or intendment favoring jurisdiction such as there is in the proceedings of a court of general jurisdiction. 120 A. L. R. 156.

### **The Case of C. R. I. & P. R. R. Co. v. Schendel.**

The most remarkable feature of the opinion in the Circuit Court of Appeals is the reliance placed upon the case of *C. R. I. & P. R. R. Co. v. Schendel, Adm. of Hope, dec'd and Elder*, 270 U. S. 611, 70 L. Ed. 757.

Two men were injured in the same accident. The cases were tried and appealed in the same proceeding. The Supreme Court opinion definitely deals with two separate cases. The Circuit Court of Appeals has cited from the Hope case which is not like the case at bar.

In the Hope case, the railroad company pleaded a final judgment of compensation of an Iowa state court possessing general jurisdiction. That court specifically held that the deceased was engaged in intrastate commerce. Those facts distinguish the case from the case at bar.

In the Elder case, the railroad company began a proceeding before the Industrial Commissioner in Iowa. Elder averred that he was engaged in interstate commerce and was not subject to the Workmen's Compensation Act. The Deputy Commissioner heard the matter, filed his decision, and Elder applied for a review, by the Commissioner, but no action had been taken upon the application at the time judgment was rendered in his suit at law under the Federal Employers' Liability Act.

The decision had not ripened into an enforceable award and the Supreme Court of the United States said "We are not called upon to determine what, in that event, would have been its effect as an estoppel."

Thus it appears that the United States Supreme Court has reserved its decision upon the question involved in this proceeding. The Circuit Court of Appeals was in error in saying that "This case is determinative of the question here presented." (Tr. 38.)

Even though it be considered that *C. R. I. & P. R. R. Co. v. Schendel* held as the Circuit Court of Appeals found, nevertheless it should not be held decisive of the issues in this case.

The case of *C. R. I. and P. R. R. Co. v. Schendel* cannot be considered more than an exposition of the laws of Iowa applicable to the facts in that case. Under the doctrine of *Erie v. Tompkins*, 304 U. S. 64, this case should be decided according to the laws of the State of Illinois as laid down by the highest court of that state.

The Workmen's Compensation Act of the State of Iowa is different from the Workmen's Compensation Act of Illinois. Under the law of Illinois, the Industrial Commission is but an administrative body. It is not a court and has no inherent powers of a court and there are no intentions in favor of its jurisdiction. (*Michelson v. Industrial Commission*, 375 Ill. 462.)

The Circuit Court of Appeals should have decided the case according to the laws of Illinois and not under the general laws.

#### **Failure to Appeal From the Industrial Commission.**

The Circuit Court of Appeals seems to hold that because an appeal was not taken from the Industrial Commission, that petitioner is bound by the award. The position taken probably results from a misunderstanding of petitioner's position.

Petitioner takes this stand: Whether the Supreme Court of Illinois would have reversed the award is immaterial. Petitioner asserts that the award was insufficient in that it did not decide the question of intrastate commerce, and no plea which the defendant might file could truthfully state that the issue was decided by the Industrial Commission. Petitioner believed that the plea of *res judicata* was insufficient because of the lack of a finding of intrastate commerce and he relied upon the trial court to decide accordingly.

We pray that this Court take jurisdiction of the case and reverse the decision of the Circuit Court of Appeals.

Respectfully submitted,

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*Attorney for Petitioner.*